

**OCT 23 2003**

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON**  
**U.S. COURT OF APPEALS**

ROBERT L. LOEH,

Plaintiff - Appellant,

v.

CAROLINE A. BRAATZ, RODRIGO  
VARGAS, Agents, Naval Criminal  
Investigative Service;

Defendants - Appellees

and

ONE UNKNOWN WHITE MALE,

Defendant.

No. 03-55165

D.C. No. CV-02-02481-MJL

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
M. James Lorenz, District Judge, Presiding

Submitted October 10, 2003\*\*  
Pasadena, California

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

Before: REINHARDT, FERNANDEZ, and RAWLINSON, Circuit Judges.

Plaintiff Robert L. Loeh appeals from an order of the district court that dismissed with prejudice his claims for damages, declaratory relief, and injunctive relief arising out of a search conducted by investigators from the Naval Criminal Investigative Service. Loeh raises several issues on appeal, each of which is based upon the contention that the defendants violated his Fourth Amendment rights.

We do not reach the merits of Loeh's issues, as each is based upon constitutional claims which Loeh admits he did not raise in his general court-martial. The "failure to raise . . . federal constitutional claims in the military court system [bars a plaintiff] . . . from raising them in federal court, absent a showing of cause and prejudice." Davis v. Marsh, 876 F. 2d 1446, 1450 (9th Cir. 1989). Loeh has demonstrated neither cause nor prejudice for his failure to raise the instant claims. We therefore deem them waived. The decision of the district court is

**AFFIRMED.**